Supreme Court, U. S.
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IN THE

# Supreme Court of the United States

October Term, 1977

NO. 77-474

STATE, EX REL JEFFERSON PARISH SCHOOL BOARD

*Petitioners*

*Versus*

CITY PARK IMPROVEMENT ASSOCIATION, ORLEANS PARISH SCHOOL BOARD, REGISTRAR, STATE LAND OFFICE, THE CITY OF NEW ORLEANS and THE STATE OF LOUISIANA

*Respondents*

## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

JAMES O. MANNING
JACK GRANT
*Attorneys for Petitioners*
808 North Causeway Blvd.
Metairie, Louisiana 70001
Phone: 834-2372

J. G. HAUSER, INC., "LEGAL PRINTERS", 100-A JEFFERSON HWY., N. O., LA. 70121

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*Respondents*

## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

The petition of JEFFERSON PARISH SCHOOL BOARD, prays that a Writ of Certiorari issued to review the judgment of the Supreme Court of the State of Louisiana, July 1, 1977, which refused to review a judgment of the Fourth Circuit Court of Appeals, State of Louisiana, which denied petitioner any ownership or monetary consideration for its proportional interest in a 16th section "school board land" granted by the United States Congress to the State of Louisiana for the benefit of the inhabitants of the township.

## *OPINIONS BELOW*

Petitioner sought by a declaratory judgment to determine the nature of its rights and status to approximately 28 acres of land situated in City Park of New Orleans, Louisiana. The land is a 16th section of Township 12 South, Range 11 East, which is located 85.16% in Orleans Parish and 14.84% in Jefferson Parish. The JEFFERSON PARISH SCHOOL BOARD sought declaratory relief on behalf of its inhabitants living in that township. The suit was dismissed on a Motion for Summary Judgment in the Court of original jurisdiction on July 20, 1974. The case was subsequently appealed to the Fourth Circuit Court of Appeal which affirmed with reason the lower Court's opinion and is reported at 345 S. 2d 597.

Petitioner sought a Writ of Certiorari and review in its own Supreme Court which writ was denied on July 1, 1977, 347 So. 2d 259. No rehearing is allowed for the refusal to grant a writ of certiorari in our State.

## *JURISDICTION*

The jurisdiction of this Court is invoked under Title 28 U.S.C. 1257 (3).

## *CONSTITUTIONAL QUESTIONS*

1. Did the Louisiana Legislature by Act 405 of 1962 have the authority to exchange 16th section land granted to the State for public school purposes to allow said land to be used as a golf course in a public park?
2. Did the taking of the Parish of Jefferson's interest in the 16th section school lands without the payment of funds to said school district constitute an unlawful taking in contravention of the Fourteenth and Fifth Amendment of the United States Constitution?



## *STATEMENT OF THE CASE*

The facts in this case are uncontroverted and, therefore, may be introduced to the Court in a summary manner. The Congress in its wisdom instituted a policy which was enacted into law reserving every 16th section in every township for public schools to benefit the inhabitants of the township. The primary purpose was to allow the school districts to sell the land and to use the proceeds for public education. Louisiana received such grants upon its admission to the Union in 1812.

Situated in a public park is such a 16th section consisting of approximately 28 acres of prime residential land. For some time the City of New Orleans was interested in enlarging its public golf course and sought to use this 16th section of land for that stated purpose. Because of anticipated legal problems it was successful in having the Louisiana Legislature pass Act 405 of 1962 which had the effect of transferring this 16th section land to the City Park Improvement Association to be utilized for a golf course and in turn the City Park Improvement Association transferred certain other lands in the same general area to the Orleans Parish School Board which contained an existing school known as Kennedy High and the Act further provided that any interest that the Jefferson Parish School Board had in the existing 16th section was transferred to the land reserved in exchange the Kennedy High School.

The Jefferson Parish School Board instituted this suit attacking the validity of 405 of 1962 as contrary to Federal legislation creating the trust and the taking of Jefferson Parish's interest in the land as an unlawful expropriation of the land without compensation. Thus being in violation of the United States Constitution and that of the State of Louisiana.

Even prior to the admission of Louisiana to the Union, the Congress of the United States provided for a system of rectangular survey wherein the county was divided into townships, ideally consisting of thirty-six (36) square miles and subdivided into thirty-six (36) one (1) square mile squares.

The 16th section of each township was granted to the State for schools upon its admission to statehood. Quite naturally, these townships would sometimes cross political boundaries, and in those instances the county or parish would share in the 16th section, regardless of its location, in the same proportion as the township was located within the boundaries of the parish or county. As in this instance, although the 16th section is located entirely within the boundaries of Orleans Parish, the township is located approximately eighty-five percent (85%) in New Orleans and fifteen percent (15%) in Jefferson Parish, and the parishes should share in the proceeds of a sale of the 16th section in the same proportions.

Historically, the land was donated to the State for the benefits of the inhabitants of the township, for in New England and other states a township is often recognized as a political subdivision, but not so in Louisiana. Therefore, the law has recognized that the land was donated to the State in trust for the inhabitants of the various townships.

The land in question was granted to the State upon Louisiana's admission to the Union in 1812. It so remained until 1962, when the Louisiana Legislature passed Act 405 of that session, which authorized the State Land Office to transfer the 16th section of City Park to the City Park Improvement Association, which land was to be used for a golf course and in turn, the City Park Improvement Association was to transfer certain property to the Orleans Parish School Board, which property is now Kennedy High School, and any rights that Jefferson Parish heretofore enjoyed in the 16th section of City Park was relocated to an undertermined but future right in Kennedy High School. The Act 405 of 1962 and the subsequent transfers of the property are the subject matter of this lawsuit.

Since the 16th sections were granted to the states and schools, the underlying purpose being that the states would sell the land and the revenues derived therefrom would be used for school purposes, Jefferson Parish is seeking in lieu of the lands, its estimated value at the time of the taking.



Certainly, it would be unreasonable for Jefferson Parish to seek to undo the golf course which has been constructed upon the land, but at the same time it is not unreasonable to consider the effect of Act 405 of 1962 as an expropriation of lands or funds belonging to the inhabitants of Jefferson Parish, and for its school system to be reimbursed the value of the taking as of the time it was transferred to the City Park Improvement Association.

Any approach to this question must be from a historical perspective. Millions of acres granted to the various states upon admission to the union were squandered and sold for unreasonable prices. The initial land grants were given to the states without restrictions as to disposition or use of the land and the courts in general considered that the obligation of the state to use the land in accordance with the grant for school purposes was an honorary one. *State of Louisiana vs. William T. Joyce Company,* 261 F. 128, (CCA, La. 1919) cert. den. 253 U. S. 484, 40 S. Ct. 481; *Alabama vs. Schmidt,* 232 U.S. 168, 34 S. Ct. 301, 58 L. Ed. 355 (Ala. 1914).

Congress became aware that the states honorary obligation to use these school grant lands for the purpose designated was not working and upon the admission of the State of New Mexico-Arizona and other western states there was inserted in the grant a specific prohibition against the use of funds derived from the sale of school lands for other purposes than designated by the grant.

In the last 20 years this Court and various state and federal courts have addressed themselves to the problem such as is under consideration, wherein various state and local governments sought to use 16th section lands or proceeds for purposes contrary to the trust.

This Court has addressed itself to the problem in two (2) cases; *Lassen vs. Arizona,* 87 S. Ct. 584, 385 U.S. 458 (1967); and *Alamo Land & Cattle Co., Inc. vs. Arizona,* 495 F. 2d 12, reversed and amended, 96 S. Ct. 910.

In the case of *Lassen vs. Arizona,* supra, the State of Arizona sought to construct a highway through 16th section

lands granted to the State of Arizona. The State took the position that inasmuch as the land was granted to it by an Act of Congress, it need not pay or reimburse the school system for the land taken. The Supreme Court found to the contrary, and although the Arizona land grant contained an express prohibition from using the lands for anything other than school purposes, the Court in its opinion made reference to the abuse of the sale of land grant property and by inference condemned it. The language of the Court is very emphatic in holding that "The trust will be protected and its purpose entirely satisfied if the State is required to provide full compensation for the land it uses."

This Court in that decision recognized the problem and held as follows:

> "The grant was plainly expected to produce a fund, accumulated by sale and use of the trust lands, with which the State could support the public institutions designated by the Act. It was not supposed that Arizona would retain all the lands given it for actual use by the beneficiaries; the lands were obviously too extensive and too often inappropriate for the selected purposes. Congress could scarcely have expected, for example, that many of the 8,000,000 acres of its grant "for the support of the common schools," all chosen without regard to topography or school needs, would be employed as building sites. It intended instead that Arizona would use the general powers of sale and lease given it by the Act to accumulate funds with which it could support its schools".

In essence the Court concluded thusly:

> "The trust will be protected and its purposes entirely satisfied if the State is required to provide full compensation for the land it uses."

Just last year this Court had another opportunity to address itself to this very issue. *Alamo Land & Cattle Co., Inc. vs. Arizona,* supra. This case involved a federal condemnation of



certain lands situated in the State of Arizona, which lands were subject to a grazing lease. It appeared that a substantial portion of lands in Arizona and New Mexico were involved and likewise subjected to grazing leases and the ultimate question involved was the allocation of funds between the State of Arizona asserted through federal grants and the defendant, *Alamo,* asserting compensable leasehold interest in the lands and in the improvements thereon. This Court in *Alamo* reviewed the entire history and applicable jurisprudence to federal land grants and the pruposes for which the land was given to the state. In the final analysis the Court affirmed *Lassen* and extended the doctrine of as cited, *Ervien vs. United States,* 251 U.S. 41,40 S. Ct. 75 (1919), and in affirming the doctrine of *Ervien* held as follows:

> "Much of what was said in Lassen had also been said, several decades earlier, in *Ervien vs. United States,* 251 U.S. 41, 40 S. Ct. 75, 64 L. Ed. 128 (1919), when the provisions of the same Enabling Act were under consideration in a federal case from New Mexico.the Court's concern for the integrity of the conditions imposed by the Act, therefore, has long been evident."

In discussing what appeared to be an apparent conflict between the Eighth and Ninth Circuit Courts of Appeal, the Supreme Court in *Alamo* held there was no conflict, and in doing so recognized the precedential value of cases upholding the Trust Fund Doctrine in those states which had no express provision against the transfer of the 16th section school lands in violation of the trust. The Court held that the Nebraska Enabling Act of 1864, unlike the New Mexico-Arizona Act, did not contain the detailed restrictive provisions which appeared in the New Mexico-Arizona Act. Despite the abasence of the restrictions, the Court arrived at the same results -- that in the condemnation of 16th section school board lands, the School Trust Fund must be reimbursed the full value of the land expropriated, whether the

Congressional Enabling Act contained an express restriction as found in the New Mexico-Arizona Act or one that was silent on the subject, such as the Nebraska Enablilng Act. The Court held in *Alamo* as follows:

> "*Alamo* suggests that the Court of Appeals decision is at odds with the above cited case of *Nebraska vs. United States*, 164 F. 2d 866 (CA 8 1947), cert. denied, 334 U.S. 815, 68 S. Ct. 1070, 92 L. Ed. 1745 (1948). There, in the face of a totality claim like that made by Arizona here, the Eighth Circuit ruled that trust lands in Nebraska were to be treated as any other property, and that condemnation proceeds were subject to allocation among the State as trustee and the holder of an outstanding agricultural lease. The Nebraska Enabling Act of April 19, 1864, 13 Stat. 47, was an earlier edition of this type of statute, and was adopted more than four decades before the New Mexico-Arizona Act. It did not contain the detailed restrictive provisions that appear in the 1910 Act and that was developed and utilized as passing years and experience demonstrated a need for them. Because of this, one may say, as Arizona does, that the Nebraska case is distinguishable from the present one. But the decision is not devoid of precedential value, for it is consistent with our analysis of the New Mexico-Arizona Act in its recognition of the possibility of a compensable leasehold interest in trust land upon federal condemnation, and it demonstrates the existence of that interest is not incompatible with the trust land concept. See also *United States vs. 78.61 Acres of Land*, 265 F. Supp. 564 (Neb. 1967), a post-*Lassen* case; *United States vs. 40,021.64 Acres of Land*, 387 F. Supp. 839-849 (N.M. 1975)."

This Court is not the only Court to address itself to this issue. Similar conclusions are found in *Johnson vs. Central Nebraska Public Power & Irrigation District*, 8 N.W. 2d 841, which held that the State Legislature was not authorized to make a grant in fee of school land for irrigation district use without compensation. The Court in its opinion held:



> "The statutes purporting to grant to public corporations engaged in construction, operation and maintenance of works of internal improvement the right to obtain rights of way over public school lands without compensation *are unconstitutional.*" (emphasis added)

Again, in *United States vs. 78.61 Acres of Land in Dawes and Sioux Counties, Nebraska*, 265 F. Supp. 564, as to whether the Legislature had authority to grant to the United States the right of way to school land without compensation, the Court answered in the negative and cited *Lassen vs. Arizona*, supra, pointing out that although the Nebraska Enabling Act contained no restrictions against a transfer of the property in violation of the trust, as found in *Lassen vs. Arizona*, an implied prohibition does exist and any diminution in the value of the trust is prohibited.

In the case of *State ex rel Highway Comm. of N.W. vs. S. S. Walker*, 301 P. 2d 317, the Supreme Court held that the Commissioner of Public Lands in New Mexico could charge the State Highway Commission for easements for state highways which would cross lands granted to the State of New Mexico by the Enabling Act granting its statehood. In its opinion, the Court cited the language of *Ervien vs. United States*, 251 U.S. 41, 40 S. Ct. 75, (1919), as follows:

> "Although in the present case the relator does not propose that the Commissioner build highways, it does ask that he be compelled to give free rights-of-way for highways and also to donate materials from trust lands for highway construction purposes.
>
> .....There is in the Enabling Act a specific

> enumeration of the purposes for which the lands were granted and the enumeration is necessarily exclusive of any other purpose. And to make assurance doubly sure it was provided that the natural products and money proceeds of such lands should be subject to the same trusts as the lands producing the same. To preclude any license of construction or liberties of inference it was declared that the dispostion of any of the lands or of the money or anything of value directly or indirectly derived therefrom for any object other than the enumerated ones should be 'deemed a breach of trust.'''

As mentioned above, in almost all of the cases in which the question of authority of the Legislature to divert lands for purposes contrary to the school trusts, have been successfully attacked, as evidenced by these decisions cited above.

*CONCLUSION*

It is respectfully submitted that the act of the Louisiana Legislature, Act 405 of 1962 was an attempt to circumvent the intent and purposes of the initial grant of 16th section school land to the State of Louisiana for the benefit of the inhabitants of the township and as such should be declared illegal and contrary to the intent and purposes of the grant.

For these reasons, a writ of certiorari should issue to review the judgment of the Louisiana Supreme Court.

Respectfully submitted,

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JAMES O. MANNING
808 North Causeway Boulevard
Post Office Box 7746
Metairie, Louisiana 70010
Phone: (504) 834-2372



JACK GRANT
601 Second Street
Gretna, Louisiana 70053

Attorneys for Petitioner

*CERTIFICATE OF SERVICE*

I, James O. Manning, a member of the bar of the United States Supreme Court, certify that at least one copy of the foregoing petition for certiorari has been served on the adverse party by depositing same in a U.S. mail box, with first class postage prepaid, addressed to counsel's last known address in New Orleans, Louisiana.

Mr. Louis M. Jones
Assistant Attorney General
State of Louisiana
234 Loyola Avenue
New orleans, Louisiana 70112
Attorney for Defendants,
State of Louisiana and
Mrs. Ellen Bryan Moore, Registrar,
State Land Office

Beuker F. Amann
First Assistant City Attorney
and Thomas P. Anzelmo, Sr.
Assistant City Attorney
City Hall
New Orleans, Louisiana
Attorneys for Defendant,
City of New Orleans

Louis B. Porterie
of Duke and Porterie
1206 American Bank Building
New Orleans, Louisiana 70130
Attorneys for Defendant,
City Park Improvement Association

Samuel I. Rosenberg
of Polack, Rosenberg, Rittenberg & Endom
1006 Hibernia Bank Building
New Orleans, Louisiana 70112
Attorney for Defendant,
Orleans Parish School Board

Metairie, Louisiana, this day of September, 1977.

JAMES O. MANNING



**APPENDIX A**

**CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS**

**STATE OF LOUISIANA**

**DIVISION "G"**

**DOCKET 4**

**NO. 564-179**

**STATE, EX REL JEFFERSON PARISH SCHOOL BOARD**

**VS.**

**CITY PARK IMPROVEMENT ASSOCIATION,
ORLEANS PARISH SCHOOL BOARD,
REGISTRAR, STATE LAND OFFICE,
THE CITY OF NEW ORLEANS, and
THE STATE OF LOUISIANA**

***JUDGMENT***

This cause came on this day on the motions for summary judgment filed herein by all defendants.

Present:

James O. Manning, Esquire
Attorney for Plaintiff,
Jefferson Parish School Board

Louis B. Porterie, Esquire
of Duke & Porterie,
Attorneys for Defendant,
City Park Improvement Association

Louis M. Jones, Esquire
Assistant Attorney General
State of Louisiana,
Attorney for Defendants,
The State of Louisiana and
Mrs. Ellen Bryan Moore, Register,
State Land Office

Beuker F. Amann, Esquire,
First Assistant City Attorney
and Thomas P. Anzelmo, Sr. Esquire,
Assistant City Attorney,
Attorneys for Defendant,
City of New Orleans

Samuel I. Rosenberg, Esquire
of Polack, Rosenberg, Rittenberg & Endom
Attorneys for Defendant,
Orleans Parish School Board

After hearing and considering the pleadings, the affidavits submitted, the briefs and the arguments of counsel, the court determined that there is no genuine issue as to material fact in this matter and considering the law to be in favor of the defendants, City Park Improvement Association, Orleans Parish School Board, Registrar, State Land Office, the City of New Orleans and the State of Louisiana, and against plaintiff, Jefferson Parish School Board, for the reasons this day orally assigned,

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of the defendants, City Park Improvement Association, Orleans Parish School Board, Registrar, State Land Office, the City of New Orleans and the State of Louisiana, and against the plaintiff, the Jefferson Parish School Board, dismissing this action at plaintiff's cost.



Judgment read, rendered and signed in open court this 20th day of September, 1974, at New Orleans, Louisiana.

JUDGE

APPENDIX B

| | |
|---|---|
| STATE, EX REL JEFFERSON PARISH SCHOOL BOARD<br>VS<br>CITY PARK IMPROVEMENT ASSOCIATION, ORLEANS PARISH SCHOOL BOARD, REGISTRAR, STATE LAND OFFICE, THE CITY OF NEW ORLEANS and THE STATE OF LOUISIANA. | NO 7570<br>COURT OF APPEAL<br>FOURTH CIRCUIT<br>STATE OF LOUISIANA |

APPEAL FROM THE CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS, STATE OF LOUISIANA, DIV. "G", NO. 564-179, HONORABLE PAUL P. GAROFALO, JUDGE.

JOHN C. BOUTALL
JUDGE

(Court composed of Judges William V. Redmann, John C. Boutall and Patrick M. Schott).

JACK A. GRANT, COUNSEL FOR JEFFERSON PARISH

SCHOOL BOARD, JAMES O. MANNING, SPECIAL COUNSEL FOR JEFFERSON PARISH SCHOOL BOARD,
*PLAINTIFF-APPELLANT.*

PHILIP S. BROOKS, CITY ATTORNEY; THOMAS P. ANZELMO, SR., ASSISTANT CITY ATTORNEY; COUNSEL FOR CITY OF NEW ORLEANS.
*DEFENDANT-APPELLEE.*

SAMUEL I. ROSENBERG, OF POLACK, ROSENBERG, RITTENBERG & ENDOM, COUNSEL FOR ORLEANS PARISH SCHOOL BOARD,
*DEFENDANT-APPELLEE.*

DUKE & PORTERIE, JOHN L. HANTEL, LOUIS B. PORTERIE, COUNSEL FOR CITY PARK IMPROVEMENT ASSOCIATION; WILLIAM J. GUSTE, JR., ATTORNEY GENERAL; WARREN E. MOULEDOUX, FIRST ASSISTANT ATTORNEY GENERAL: LOUIS M. JONES. ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF JUSTICE, STATE OF LOUISIANA; ON BEHALF OF REGISTRAR, STATE LAND OFFICE, AND THE STATE OF LOUISIANA,
*DEFENDANTS-APPELLEES.*

April 18, 1977 *AFFIRMED.*

This is a suit in the nature of a declaratory judgment brought by Jefferson Parish School Board to determine the nature and status of its right to approximately 28 acres of land situated in City Park of New Orleans, Louisiana, being the fractional remainder of the 16th Section of Township 12, South Range 11 East, Southeastern Land District of Louisiana. Specifically, the suit seeks to declare that Act 405 of the Louisiana Legislature of 1962 is unconstitutional, and that subsequent transfers of the 16th Section property are illegal, and should be set aside. The suit seeks to have the Jefferson Parish School Board declared to be a partial owner of the 16th



Section, or in the alternative, that it be reimbursed its proportionate share of the cash value of the property.

The defendants have brought a motion for summary judgment, and it is conceded that there is no dispute as to the facts underlying this case. The trial court rendered a judgment in favor of defendant, dismissing plaintiff's suit, and the Jefferson Parish School Board has appealed.

The subject property is the remainder of one of those 16th Sections of each Township which were granted by the United States of America to the various states upon admission to statehood to be used for school purposes. The original survey of the Township showed that the 16th Section was only a fractional 16th Section, and much litigation has occurred affecting both the boundaries and the area of the Section. See Board of Directors v. New Orleans Land Company, 138 La. 32, 70 So. 27 (1915); Leader Realty Company v. Lakeview Land Company and Leader Realty Company v. New Orleans Land Company, 142 La. 169, 76 So. 599 (1917); State v. New Orleans Land Company, 143 La. 858, 79 So. 515 (1918); Brott v. New Orleans Land Company, 151 La. 134, 91 So. 653 (1922); Meyer v. State, 168 La. 146, 121 So. 604 (1929). As presently constituted the fractional section is approximately 16 acres in City Park of New Orleans lying roughly in a long narrow rectangle. While the 16th Section is located entirely in Orleans Parish, the Township itself lies in the proportion of 85.16% in Orleans and 14.84% in Jefferson Parish.

Because of the location and shape of the fractional Sixteenth Section, the Orleans Parish School Board determined that it should arrange a transfer or exchange of that land for a tract on the north boundary of City Park upon which to erect a high school. After considerable negotiations, an arrangement was made amongst the defendants whereby the exchange could be made. The Louisiana Legislature then passed Act 405 of 1962 providing for the state to transfer title of the Sixteenth Section lands to the City of New Orleans to be managed and controlled by the New Orleans City Park Improvement Association (a

State Agency) for park purposes, and further provided authorization to the City of New Orleans to convey another tract containing 17 acres to the Orleans Parish School Board for public school purposes. The Act further provided that this latter land acquired by the Orleans Parish School Board shall be held by it for the same purposes, benefits and uses as is presently provided by law for Sixteenth Section Lands, and the subsequent sale or other disposition, as well as the disbursement of the proceeds of any subsequent sale thereof, shall be the same as provided by law for Sixteenth Section Lands and the rights of the Jefferson Parish School Board in said land shall be the same as they were in the Sixteenth Section conveyed in Section 1 of the Act. Subsequent to the passage of this Act, the transfers were effected so that the fractional Sixteenth Section now forms a part of City Park and is administered by the New Orleans City Park Improvement Assn., and the other tract is utilized by the Orleans Parish School Board, which has built a high school upon the tract.

Jefferson Parish School Board contends that Act 405 of 1962 is invalid for the following reasons: By an act of Congress of February 14, 1843, 5 Stat. 600, the Legislatures of Illinois, Arkansas, Louisiana and Tennessee were authorized to sell the Sixteenth Sections in their respective states, the proceeds derived therefrom to be used for the benefit of the various school systems located within the Township in which the land was sold. The Statute further requires that the land shall in no wise be sold without the consent of the inhabitants of the Township or District in which they are located. Thereafter, the Louisiana Legislature, Beginning with Act 321 of 1855, which, together with other Acts on the subject are embodied in LSA-R.S. Title 41, Chapter 6, enacted a series of laws to provide for the public sale and leasing of the various Sixteenth Sections, and also enacted Constitutional provisions culminating in, for the purposes of this suit, the Constitution of 1921, Article 12, Sections 18 and 19 to provide for the distribution of these proceeds. It is contended that the exchange of property authorized by Act 405 of 1962 is illegal in that it does not follow



the procedures outlined in the laws enumerated above, and that further there is no distribution of proceeds in accordance with those laws.

The issue of the application of the Act of Congress February 15, 1843, c.33, 5 Stat.600, requiring consent of the inhabitants of the Township before sale of Sixteenth Section Lands can be made, has been settled in the case of *Meyer v. State*, 168 La. 146, 121 So. 604 (La. 1929). That case held that when the survey of Sixteenth Sections in Louisiana was officially approved October 20, 1873, the State of Louisiana had a complete legal title vested in it, and was no longer bound by the conditions and limitations imposed by the 1843 Act of Congress. LSA-R.S. 41:711 similarly provided for an election to be held before sale of school lands, and as to these provisions as well as to others of similar nature, we only say that the Legislature has in its wisdom passed another Legislative Act covering the point in controversy, and that such general statutes cannot prevail in the face of a special statute containing contrary provisions.

Turning to a consideration of the constitutional provisions, to-wit, Article 12, Section 18 and Section 19 of the Constitution of 1921, we do not find in those sections a prohibition against the transaction authorized under Act 405 of 1962. Those sections envisage a recovery of proceeds from lands erroneously sold, which is either credited proportionately to the school boards involved, or placed into a school fund for later use by those school boards. We note for example that the same Constitution in Article 12, §14 points out the sources of funds for support of public schools. After enumerating the avails of certain taxes, etc., it sets out in subsection (c) additional state funds, the first of which is the following:

> "1. The interest on the proceeds of lands heretofore or hereafter granted by the United States for school purposes and such revenues as may be derived from unsold portions of such lands; provided, that the Legislature is authorized to release all proceeds from the sale of such lands to

the parishes for use in acquiring, constructing, and equipping public school-plant facilities."

Considering these three sections of Article 12, it would appear that the state may sell, lease or otherwise enter into contracts which may provide revenue from the use or disposition of school lands, and while the sections appear to consider that these proceeds will usually be in cash, there is nothing that would prevent the state from legislatively providing for other proceeds not in cash, and the disposition of these proceeds.

Under existing law (R.S. 41:631 as amended Acts 1954, No. 86 §1) since the Sixteenth Section involved lies entirely in the Parish of Orleans, the Orleans Parish School Board is entitled to buy the tract for its exclusive purposes, and need only pay into the fund for the benefit of it and the Jefferson Parish School Board the sum of $1.25 per acre. By Act 405, the Legislature has devised a different method of payment than money by exchanging or swapping the Sixteenth Section Tract for another tract of land for use as school purposes, and has preserved the rights of the Jefferson Parish School Board in the second tract, the same as it had in the first tract. There is no complaint made that the tracts are of unequal value, or that the Jefferson Parish School Board has had its right to share in the proceeds lessened by the provisions of Act 405. It is contended instead that the Act has disposed of the land for another governmental purpose, that this constitutes a sale, and that the respective school boards are entitled to their proportionate cash value of the sale.

In support of this contention, appellant urges to us a number of cases requiring cash payment when land is used for other governmental purposes. Appellant relies most strongly on doctrines expressed in the cases of *Lassen v. Arizona*, 87 SCT 584, 385 U.S. 458 (1967) and the case of *Alamo Land & Cattle Company, Inc. v. Arizona* 96 SCT 910, 424, U.S. 295 (1976). However in those cases it was proposed simply that the state, being owner of the land, could divert its use to a purpose other



than a school purpose without compensation. This is not our situation. Here there are proceeds from the transfer of the land, that is, another tract of land for school purposes, with the obligation of school purposes being shifted from one tract to another better suited for school purposes. The transaction authorized under Act 405 was not a sale, but an exchange, the proceeds of the exchange being the new property acquired. Thus the Act is in keeping with the spirit of the original donation of these lands, that is for public school purposes. Instead of the Orleans Parish School Board being able to use the Sixteenth Section upon which to build a school, in this case the same purposes are accomplished by virtue of dedication of new lands for this public school purpose.

This same proposition, that this is an exchange of lands for governmental purposes, would remove Act 405 from the application of Article 4, Section 12 of the Constitution of 1921 which provides:

> **"The funds, credit, property or things of value of the State, or of any political corporation thereof, shall not be loaned, pledged or granted to or for any person or persons, associations or corporations, public or private;****"

This prohibition is basically directed against the situation wherein the state may make a donation, gift or other free use of its property for other than governmental purposes, and it is not directed against state agencies or political corporations in the conduct of their legitimate affairs. See *LeBlanc v. Police Jury of Parish of Rapides*, 188 So. 2d 131 (La. App. 3rd Cir. 1966). If the word "Granted" were to be interpreted as prohibiting *any* exchange or sale of Sixteenth Section school lands, the entire statutory system of their utilization for school purposes would be adversely effected, defeating the purposes for which they were originally granted to the State.

The Supreme Court has held in a case involving similar provisions in a prior constitution, that the prohibition against granting state property does not prohibit the state from

changing the destination of particular public property or from intrusting the administration of such property to the municipal corporation within the limits of which it lies. *Saucier v. City of New Orleans*, 119 La. 179, 43 So. 999 (1907). Similarly, a sale of property discovered unsuitable for governmental purposes of the Board of Commissioners of the Port of New Orleans was held not a "grant" within the provisions of this section of the 1921 Constitution. *Board of Com'rs of Port of New Orleans v. New Orleans Public Service*, 161 La. 741, 109 So. 408 (1926). See also Op. Atty. Gen. 1926-28, p. 273, wherein it was ruled permissible to exchange tracts of land between Louisiana State University and the state insane asylum for benefit of, and more suitability to use of, each institution.

We hold that the prohibitions of Article IV §12 do not apply to Act 405 of 1962 and the exchanges of property provided therein.

Finally, Act 405 is challenged in that it is a local or special act in violation of Article IV § 4 and Article IV § 6 of the Constitution of 1921, the first as to its content and the latter as to lack of proper publication.

Primarily, we conclude that the Act is not a local or special act. The Act involves the transfer of certain publicly owned property as expressed briefly in the Act's title:

> "To provide additional means and authority to carry out the purposes of the public park location in the City of New Orleans known as the City Park of New Orleans by transferring title to certain State owned lands within the City Park to the City of New Orleans and providing for the management and control thereof by the New Orleans City Park Improvement Association, an agency of the State; and to provide for the transfer of title to other lands by the City of New Orleans to the Orleans Parish School Board, an agency of the State; repealing all laws or parts of laws in conflict herewith."

State land is in effect owned by all of the citizens of the State and its sale or transfer affects the rights of all citizens



generally, not just the citizens of the particular locality in which the land is situated. Op. Atty. Gen. 1944-46, p. 340; Op. Atty. Gen 1942-44, p. 702; 82 C.J.S. Statutes §14b, and cases therein cited. A statute is not a local or special law if it affects persons or things throughout the state, operates on subject in which the people at large are interested, although to some degree it applies only to a particular locality, or is both general and special or private. *Kotch v. Board of River Port Pilot Com'rs for Port of New Orleans*, 209 La. 737, 25 So. 2d 527 (1946), affirmed, 330 U.S. 552, 67 S. Ct. 910, 91 L. Ed. 1093. Local or special laws refer to laws wherein private individuals are seeking some private advantage or advancement for the benefit of private persons or property within a certain locality. State ex rel *Grosch vs. City of New Orleans*, 211 La. 241, 29 So. 2d 778 (1947).

We note that the property transferred is not to be used by persons for private advantage but for park and recreational purposes of the public generally to be administered by a state agency. Similarly, the other portion of land concerned is to be used for public school purposes within the intent of the Sixteenth Section laws. We refer to the following cases which would seem to involve particular plots of ground and particular governmental use wherein the concerned statute was held not to be special or local and are persuasive in this case. *Knapp v. Jefferson-Plaquemines Drainage District*, 224 La. 105, 68 So. 2d 774 (1953); *Benedict v. City of New Orleans*, 115 La. 645, 39 So. 792 (1905); *Saucier v. City of New Orleans*, 119 La. 179, 43 So. 999 (1907). Since we hold Act 405 of 1962 not to be a local or special act the prohibitions of Article IV §4 and §6 are not applicable.

For the reason above assigned, we see no prohibition against the enactment of Act 405 of 1962, nor any violation of constitutional provisions which may render it invalid. Accordingly, we affirm the judgment of the trial court.

*AFFIRMED*

APPENDIX C.

SUPREME COURT OF LOUISIANA

NEW ORLEANS, 70112

STATE EX REL JEFFERSON PARISH SCHOOL BOARD — July 1, 1977

V.

CITY PARK IMPROVEMENT ASSOCIATION, ORLEANS PARISH SCHOOL BOARD, REGISTRAR, STATE LAND OFFICE, THE CITY OF NEW ORLEANS AND THE STATE OF LOUISIANA — NO. 60,069

---

In re: Jefferson Parish School Board applying for certiorari, or writ of review, to the Court of Appeal, Fourth Circuit, Parish of Orleans

---

Writ denied, Under the assignments of error, the judgment of court of appeal is correct.

/s/WFM
/s/ JWS
/s/ ATJR
/s/ PFC

A TRUE COPY
Clerk's Office
Supreme Court of Louisiana
New Orleans
July 1, 1977

/s/ Harold A. Moise, Jr.
Clerk



APPENDIX D

ACT No. 405

House Bill No. 794

BY: Messrs. LeBreton, Vesich, Matassa, McGittigan, Altmyer, Thomas, Gregson, Casey, Anzelmo, Buras, Crais, Ciaccio, O'Brien, Bolden, Landrieu, Murtes, Smither, Sullivan, Barranger and Pfister and Senators Fink, Deichmann, O'Keefe, Duplantier, Hickey, O'Hara, Eustis and Tessier.

AN ACT

To provide additional means and authority to carry out the purposes of the public park located in the City of New Orleans known as the City Park of New Orleans by transferring title to certain State owned lands within the City Park to the City of New Orleans and providing for the management and control thereof by the New Orleans City Park Improvement Association, an agency of the State; and to provide for the transfer of title to other lands by the City of New Orleans to the Orleans Parish School Board, an agency of the State; repealing all laws or parts of laws in conflict herewith.

WHEREAS, due proof has been made that notice of intention to apply for the passage of this Act has been published in accordance with the provisions of Article IV, Section 6 of the Constitution of the State of Louisiana of 1921.

Be it enacted by the Legislature of Louisiana:

Section 1. In order to provide additional means and furnish resources to carry out the purposes for which the City Park in the City of New Orleans was created and in order to promote the welfare of the public school children of the Parish of Orleans and the other Parishes of the State, the following described lands situated within the presently existing boundaries of the City Park in New Orleans belonging to the State of Louisiana, and to which there may be any claim by any agency thereof, including the Orleans Parish School Board or the Jefferson Parish School Board or any other School Board, are hereby granted, transferred, conveyed and delivered unto the City of New Orleans:

Fractional Section 16, Township 12 South, Range 11 East, Southeastern Land District of Louisiana, East of the Mississippi River, located within the City Park of the City of New Orleans.

Section 2. The vesting of title to the said lands in the City of New Orleans shall be effective only upon the execution by the Mayor of the City of New Orleans of the notarial instrument provided for in Section 4 of this Act, and shall be evidenced by a certificate of title, which shall be issued by the Register of the State Land Office immediately upon being furnished with a certified copy of the notarial instrument provided for in Section 4 of this Act.

Section 3. The New Orleans City Park Improvement Association, an agency of the State of Louisiana, shall continue to have the management of and shall be and remain in control of the property conveyed by Section 1 of this Act to the same extent and with the same authority as now exercised by said Board over the park in New Orleans known as the City Park, and the above described land is hereby dedicated and recognized as a part of the Public Park in New Orleans known as City Park.



Section 4. The City of New Orleans, in consideration of its receipt of the fractional 16th Section described in Section 1 hereof, through its Mayor, is hereby authorized to convey, by notarial instrument before any Notary Public, a piece or portion of ground containing approximately 17 acres, located in the City Park of the City of New Orleans, to the Orleans Parish School Board for public school purposes. Said land shall front upon the west side of Wisner Blvd., and shall be adjacent to the site of ground owned by the United States of America Agricultural Department Laboratory. The exact dimensions of said portion of ground are left to the discretion of the Mayor of the City of New Orleans, the Orleans Parish School Board and the New Orleans City Park Improvement Association. Such site, when conveyed, is no longer to be dedicated for public park purposes and is then to be dedicated for public school purposes and the same is no longer to be under the management and control of the New Orleans City Park Improvement Association.

Section 5. Any land acquired by the Orleans Parish School Board pursuant to this act shall be held by it for the same purposes, benefits and uses as is presently provided by law for Sixteenth Section Lands, and its subsequent sale or other disposition, as well as the disbursement of the proceeds of any subsequent sale thereof shall be the same as is presently provided by law for Sixteenth Section Lands and the rights of the Jefferson Parish School Board in said land shall be the same as they were in the Sixteenth Section conveyed in Section 1 of this Act.

Section 6. All laws or parts of laws in conflict herewith are hereby repealed.

Approved by the Governor: July 13, 1962.

A true copy:

WADE O. MARTIN, JR.
Secretary of State.

Supreme Court, U. S.
FILED
DEC 8 1977
MICHAEL [illegible], JR., CLERK

# In the Supreme Court of the United States

## OCTOBER TERM, 1977

## NO. 77-474

STATE, EX REL JEFFERSON PARISH SCHOOL BOARD
Petitioners

Versus

CITY PARK IMPROVEMENT ASSOCIATION, ORLEANS PARISH SCHOOL BOARD, REGISTRAR, STATE LAND OFFICE, THE CITY OF NEW ORLEANS and THE STATE OF LOUISIANA
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

## BRIEF FOR RESPONDENTS IN OPPOSITION

SAMUEL I. ROSENBERG of
POLACK, ROSENBERG
RITTENBERG & ENDOM
1006 Hibernia Bank Building
New Orleans, Louisiana 70112
Attorneys for Orleans
Parish School Board

LOUIS B. PORTERIE and
JOHN L. HANTEL of
DUKE & PORTERIE
1206 American Bank Building
New Orleans, Louisiana 70130
Attorneys for City Park
Improvement Association

(Continued inside cover)

A B Letter Service, Inc., 327 Chartres St., New Orleans, La. (504) 581-8585

Attorneys Continued

WILLIAM J. GUSTE, JR. Attorney General

WARREN E. MOULEDOUX, First Assistant
Attorney General and

LOUIS M. JONES, Assistant Attorney General
DEPARTMENT OF JUSTICE
STATE OF LOUISIANA
2-3-4 Loyola Building, 7th Floor
New Orleans, Louisiana 70112
Attorneys for Registrar, State Land Office
and The State of Louisiana

PHILIP S. BROOKS, City Attorney and

THOMAS P. ANZELMO, SR., Assistant
Attorney
Attorneys for the City of New Orleans



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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1977

NO. 77 - 474

STATE, EX REL JEFFERSON PARISH SCHOOL BOARD,
Petitioner

Versus

CITY PARK IMPROVEMENT ASSOCIATION, ORLEANS PARISH SCHOOL BOARD, REGISTRAR, STATE LAND OFFICE, THE CITY OF NEW ORLEANS and THE STATE OF LOUISIANA
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

BRIEF FOR RESPONDENTS IN OPPOSITION

## OPINION BELOW

The opinion below bears the No. 7570 of the Docket of the Court of Appeal, Fourth Circuit, State of Louisiana, is dated April 18, 1977, and reported at 345 So.2d 597. This opinion is appended to the Petition for a Writ of Certiorari, Appendix B, pages 15-23.

The Supreme Court of Louisiana denied petitioner's application for writs on July 1, 1977, reported at 347 So.2d 259, and is appended to the instant Petition for a Writ of Certiorari, Appendix C, page 24.

## JURISDICTION

Respondents do not question the jurisdiction as set forth in the petition.

## QUESTION PRESENTED

Whether the State of Louisiana, through her Legislature, may authorize the exchange of a fractional 16th Section, which 16th Section lies wholly within Orleans Parish, for another parcel of land, lying wholly within the Parish of Orleans, where 14.84% of the Township, within which the fractional 16th Section is located, lies in Jefferson Parish, where the residual rights of the Jefferson Parish School Board in the second parcel of land are fully preserved and protected, and the Orleans Parish School Board is to use the second parcel for public school purposes.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The petitioner purportedly poses two numbered constitutional questions. The first question, in fact, poses no constitutional question.

The second constitutional question set forth in the petition alleges " ... an unlawful taking in contravention of the Fourteenth and Fifth Amendment of the United States Constitution?". Although the petition does not set forth which portion of the said Amendments are being contravened, presumably it is the following:

United States Constitution, Fifth Amendment:



> "... nor shall any person ... be deprived of ... property, without due process of law; ...".

United States Constitution, Fourteenth Amendment, Section 1:

> "... nor shall any State deprive any person of life, liberty, or property, without due process of law; ...".

Respondents contend that the instant petition presents no constitutional questions.

The only Statute of the United States involved in the instant case is the Act of Congress of February 15, 1843, 5 Stat. 600.

## STATEMENT OF THE CASE

The facts set forth on page 2 of the petition under the heading of "Opinion Below" and in the second paragraph on page 3 under the heading of "Statement of the Case" are slightly ambiguous.

It is true that Township 12 South, Range 11 East, Southeastern Land District of Louisiana, east of the Mississippi River, lies 85.16% in Orleans Parish and 14.84% in Jefferson Parish. However, 100% of the fractional Section 16 of said Township lies in Orleans Parish.

By 1962 the City Park Improvement Association had utilized the fractional 16th Section as a part of the City Park of New Orleans for more than thirty years, with the knowledge and tacit consent of both the Orleans Parish

School Board and the Jefferson Parish School Board. The purpose of La. Act 405 of 1962 was to exchange the fractional 16th Section, which was a long, narrow strip, for a rectangular parcel of ground, accessible to public transportation, and suitable for use as a school site. A portion of the parcel received in exchange for the fractional 16th Section was obtained by the City of New Orleans from the United States of America, in an Act of Exchange wherein the City of New Orleans acquired a portion of the site which it had formerly transferred to the United States to serve as a portion of the site for the United States Agricultural Experimental Station. The balance of the site was land already owned by the City and dedicated for park purposes. It was not until after the passage of Act 405, and the passage of the various notarial acts of exchange that the Orleans Parish School Board constructed upon the new site, the Kennedy Senior High School. The instant suit was not filed until November 14, 1973, or more than eleven years after the passage of Act 405 of 1962.

Briefly stated, the position of respondents is:

1- Petitioner is guilty of laches in waiting eleven years to attack the validity of Act 405 of 1962.

2- Petitioner, Jefferson Parish School Board, is an agency of the State of Louisiana, and is not a "person" within the purview of the Fifth and Fourteenth Amendments to the United States Constitution.

3- From and after the United States survey in 1873, the title to all 16th Section lands vested in the sovereign State of Louisiana, and were subject to being leased, sold or exchanged pursuant to the laws of the State of Louisiana,



provided, however, that the proceeds thereof would be used for public school purposes for the benefit of the inhabitants of the Township in which the 16th Sections were located. In the instant case, the Legislature of the State of Louisiana authorized the exchange of a fractional 16th Section for another parcel of land, and the rights of the inhabitants of the Parish of Jefferson and the inhabitants of the Parish of Orleans, who lived in the Township in which the 16th Section was located, were carefully preserved.

The foregoing contentions will be more fully covered in the following portions of this brief.

## ARGUMENT

### *A. Historical Background*

Prior to 1812, the year in which Louisiana was admitted into the Union as a State, the Congress of the United States reserved the 16th section in every township for public school purposes. See, Acts of Congress, March 2, 1805, c. 26, 2 Stat. at L. 324; Acts of Congress, April 21, 1806, c. 39, 2 Stat. at L. 391; and, Acts of Congress, March 3, 1811, c. 46, 2 Stat. at L. 662. See also, *St. of Louisiana v. William T. Joyce*, 261 Fed. 128 (5th Cir. 1919) cert den. 253 U.S. 484 (1920).

At the time Louisiana was admitted as a State in 1812, the title to the 16th section in each township vested in the State of Louisiana for the use and benefit of public education. Subsequently, the Congress further clarified the title to 16th section lands by an act adopted on February 15, 1843, c. 33, 5 Stat. at L. 600.

The case *sub judice* involves Section 16 of Township 12

South, Range 11 East, Southeastern Land District of Louisiand, east of the Mississippi River. Of this Township, 85.16% thereof lies in Orleans Parish and 14.84% lies in Jefferson Parish. However, all of Section 16 lies *wholly within Orleans Parish*.

The original survey by Ross and Sulakowski, Deputy United States Surveyors, approved by E. W. Foster, Surveyor General for Louisiana on October 20, 1873, showed that the subject Township contained only a fractional 16th section, containing 258.42 acres. Since a full 16th section could not be delivered by the United States to the State, the United States issued indemnity script to the State for that part of the 16th section which was covered by a prior land grant made to Alexander Milne. The indemnity script is not contested in the instant litigation. All of the foregoing facts are contained in an opinion of the Supreme Court of Louisiana, in *Board of Directors v. N.O. Land Company*, 138 La. 32, 70 So. 27 (1915), and are reviewed in *Meyer v. State*, infra.

Because the title to the subject 16th section was clouded by several conflicting chains of title, Louisiana Act 158 of 1910 authorized the School Boards of the various parishes of the state to employ attorneys on behalf of the State of Louisiana, on a contingent fee basis not to exceed 25% of the amount recovered, to bring suits in the name of the State of Louisiana to recover Sixteenth Section lands. Pursuant to the permissive authority of said Act, the Board of Directors of the public schools of the Parish of Orleans on November 18, 1915, and the Board of Directors of the public schools of the Parish of Jefferson on November 9, 1915, entered into an agreement with William Winans Wall, Esquire, and James C. Henriques, Esquire, for a contingent



fee of 25% of the land recovered, to recover for the State of Louisiana Section Sixteen, Township 12 South, Range 11 East. (The same 16th Section involved in the instant litigation).

The aforesaid attorneys then filed, in the name of the State of Louisiana, a suit to recover the subject Sixteenth Section. *State v. New Orleans Land Co.*, 143 La. 858, 79 So. 515 (1918). They were successful in recovering for the State a portion of the fractional 16th Section in this case which established the northern boundary of the Section and recognized the State as titular owner.

Other contemporary cases established remaining boundaries and the title of the State to the lands comprising the fractional 16th Section which is the subject of the present suit. *Leader Realty Company v. Lakeview Land Company* and *Leader Realty Company v. New Orleans Land Company*, 142 La. 169, 76 So. 601 (1917); *Brott v. New Orleans Land Company*, 151 La. 134, 91 So. 653 (1922).

Louisisiana Act 184 of 1928 authorized suits against the State to effect judicial partitions of lands recovered by attorneys on a contingent fee basis, as authorized by Act 158 of 1910, and gave to the transferees of the said attorneys the same right of action.

By an act before Charles Schneidau, Notary Public, dated January 13, 1928, registered in COB 441, folio 49, William Winans Wall and James C. Henriques transferred to J. Hans Meyer all of their right, title, and interest to claims for emoluments under their contracts with the School Boards of Orleans and Jefferson Parishes, and all of their undivided

right, title, and interest in and to a one-fourth interest in the property recovered.

Meyer then instituted proceedings under Act 184 of 1928 for a partition by licitation between the State and himself, as the transferee of Henriques and Wall. The State, acting through the School Boards of Orleans and Jefferson Parishes, contested the action and attacked the constitutionality of both Act 158 of 1910 and Act 184 of 1928, arguing, as does Petitioner in the case at bar, that they are in contravention of the Act of Congress of February 15, 1843, c. 33, 5 Stat. at L. 600, and also of the provisions of the Constitution of the United States, Article IV, Section 3, Clause 2 and Article VI, Clause 2. This case ultimately reached the Supreme Court of Louisiana and is entitled *Meyer vs. State*, 168 La. 146, 121 So. 604 (1929).

It is respectfully submitted that the *Meyer case is completely dispositive of the issues raised by the Petitioner in the case at bar.*

Therein, the Court upheld the validity of Act 158 of 1910 and of Act 184 of 1928 and concluded that *a complete legal title to the subject 16th section vested in the State of Louisiana after the survey of 1871-72, and its official approval in 1873.*

In order to carry out the decree of the Supreme Court in the *Meyer* case, the State, acting through the Orleans Parish School Board and the Jefferson Parish School Board, entered into an Act of Partition with J. Hans Meyer by an act before Robert Legier, late Notary Public, dated June 14, 1929, registered in COB 447, folio 615, by the terms of which *the State received*



> "... as its share in the partition all of the recovered lands lying east of the Orleans Drainage Canal and adjoining Section 15 and designated on the blue print annexed by the letter "A", and shall receive in addition thereto from the said J. Hans Meyer the sum of $20,000 in cash; ..."
>
> The aforesaid act further provides:
>
> "... and that from henceforth the portion of the property firstly described *shall belong exclusively to the State of Louisiana* ..." (underscoring ours)

The portion of the 16th section acquired by the State of Louisiana in the aforesaid partition lay to the north of the then northern limits of the New Orleans City Park.

In the meantime, the City of New Orleans acquired other land lying north of the then existing City Park from the New Orleans Land Company in two acts executed before Robert Legier, Notary Public; the first being dated February 2, 1927, registered in COB 421, folio 400, and the second being dated December 16, 1927, registered in COB 429, folio 533.

The land acquired by the City of New Orleans in the above two acts surrounded the subject fractional 16th Section. Although the title to the 16th Section was never formally transferred from the State, the City Park, with the cooperation of the Orleans Parish School Board, and the Jefferson Parish School Board, incorporated the fractional 16th Section into its plans for the northerly expansion of City Park; and this narrow strip of land, located between

the railroad tracks and Harrison Avenue, extended easterly from the Orleans Drainage Canal, across Marconi Drive, and ran through the golf driving range, Boy Scout Island and across a portion of the City Park No. 1 Golf Course. See, Ordinance of the City of New Orleans, No. 10180 C.C.S., adopted February 9, 1928.

When the need for a Senior High School in the lakefront area of the City of New Orleans became apparent, negotiations were begun with City Park aimed at using the subject 16th Section as a site for said High School. It would not have been in the public interest to erect a school house on the 16th Section land, itself, for the following reasons:

1- The 16th Section was a long narrow strip, and

2- The land was then being used by City Park for the purposes hereinabove enumerated.

3- It was not accessible to public transportation.

These negotiations resulted in the enactment by the Louisiana Legislature of La. Act 405 of 1962, which authorized the State to transfer the subject fractional Section 16 to the City of New Orleans, subject to the management and control of City Park. The Act further authorized the City of New Orleans, in consideration of the foregoing, to transfer to the Orleans Parish School Board a rectangular site in the northern portion of the City Park (which portion of the Park had not yet been developed), with the proviso that the said property would then be dedicated for public school purposes and held by the Orleans Parish School Board for the same purposes, benefits and uses as is presently provided



by law for 16th Section lands. (See, Appendix D of Petition for Writs, p. 25, for the full text of the act).

Following the enactment of La. Act 405 of 1962, the State transferred the fractional 16th Section to the City of New Orleans, and the certificate of title executed by Mrs. Ellen Bryan Moore, Registrar of the State Land Office, was made the subject of an act of deposit before Louis B. Porterie, Notary Public, dated December 6, 1963.

By an act before Ivy A. Smith, Jr., Notary Public, dated November 7, 1963, registered in COB 653, Folio 492, the United States of America, the City and City Park entered into an Act of Exchange.

On the same date, by another act before the same Notary, the City of New Orleans transferred to the Orleans Parish School Board a parcel of ground containing 17.49 acres, portions of which the City had previously acquired from the New Orleans Land Company and a portion of which had just been reacquired by the City from the United States. This notarial act tracked the language of Act 405 of 1962 and dedicated the property for public school purposes; and, provided that it shall be held by the Orleans Parish School Board for the same purposes, benefits and uses as is presently provided by law for 16th Section lands, and its subsequent sale or other disposition, as well as the disbursement of the proceeds of any subsequent sale thereof shall be the same as is presently provided by law for 16th Section lands, and the rights of the Jefferson Parish School Board in said land shall be the same as they were in fractional Section 16, Township 12 South, Range 11 East, Southeastern Land District of Louisiana, East of the Mississippi River.

*B. Law*

The arguments here being made by the Petitioner were made some 50 years ago in *Meyer vs. State, supra.* In this case the Supreme Court of Louisiana, in connection with the same 16th Section which is the subject of this litigation, said at 121 So. 604,606:

> "It follows necessarily that the State of Louisiana took title to the property in dispute after the approval of the official survey of October 20, 1873.
>
> Since at that date a complete legal title vested in the state, she was no longer bound by the conditions and limitations hitherto placed by the act of Congress of 1843 upon the disposition by her of the sixteenth section in controversy, nor by the statutes of the state enacted thereunder to obtain the consent of the inhabitants of the township or district to a sale of the land at an election duly held. (Statutes cited.) As far as the future disposition of this sixteenth section, after October 20, 1873, is concerned, the state was dealing exclusively with her own property, and was free to pass Act 158 of 1910 and Act 184 of 1928, providing for its recovery upon the basis of a contingent fee, and also for its partition by judicial sale. (Cases cited.)"

Of course, for the very same reasons, La. Act 405 of 1962 is completely valid and constitutional .

The Louisiana Supreme Court in *Meyer*, held that the



State's title to the fractional sixteenth section reserved to it in Acts of Congress of 1806 and 1811, was perfected by the approval of the official survey of that property on October 20, 1873, and that thereafter the State exercised exclusive dominion over that property free of any conditions or limitations imposed by the Act of Congress of February 15, 1843, or any other federal or state law.

The *Meyer* case thus established the principle that title to sixteenth section lands was in the State, and the right and power of the Louisiana Legislature to dispose of those lands, particularly lands of the same fractional sixtenth section involved in the present case was absolute. The right and power of the Legislature to make disposition of that fractional sixteenth section in Act 405 is settled by the *Meyer* case. The *Meyer* case sanctioned transfer by the Louisiana Legislature of part of this fractional sixtenth section to an individual in payment of a fee. Certainly then, the exchange of that fractional 16th section for other lands expressly dedicated to school purposes, as authorized by Act 405, is not subject to attack.

In the notarial act of partition before Robert Legier, Notary Public, dated June 14, 1929, hereinabove referred to, the Petitioner herein formally acknowledged that the State of Louisiana would receive as its share in the partition all of the recovered lands lying east of the Orleans Drainage Canal and adjoining Section 15, (which said lands constitute the fractional 16th Section of this litigation) plus the sum of Twenty Thousand Dollars ($20,000.00) in cash; and further acknowledged *"...that from henceforth the portion of the property firstly described shall belong exclusively to the State of Louisiana..."* (Underscoring ours). This formal

declaration, together with the acceptance of a portion of the cash, completely estops Petitioner from questioning the title of the State, or the right of the Legislature to enact Louisiana Act 405 of 1962. Clearly, the State, through the Legislature, may determine the disposition of land owned by the State.

The Federal Courts, also, have specifically held that the title to 16th Section lands vested in the State, and are subject to legislative disposition, such as is contained in La. Act 405 of 1962. See particularly, *Cooper vs. Roberts* (Mich. 1855) 18 How. 173, 15 L.Ed. 338; *Alabama vs. Schmidt* (1914) 34 S.Ct. 301, 232 U.S. 168; *State of Louisiana vs. William T. Joyce Company*, supra; and *United States vs. Morrison*, 240 U.S. 192, 36 S.Ct. 326 (1916).

The Court's attention is directed to the fact that the rights of the Jefferson Parish School Board were carefully preserved both in Louisiana Act 405 of 1962 and in the Act of Exchange entered into between the City of New Orleans and the Orleans Parish School Board. By the terms of Act 405, and by the terms of the Act of Exchange, the Jefferson Parish School Board has the identical rights in the land for which the 16th Section was exchanged, as it had in the 16th Section; i.e., if the land is ever sold it will receive its portion of the proceeds of the sale.

Petitioner contends that Act 405 of 1962 is null and void on the grounds that the fractional 16th Section in question is held in trust by the State for school purposes and so could not be transferred. From this, Petitioner claims it is entitled to be reimbursed the value of the fractional 16th Section, or that the transfer be entirely set aside.



These contentions of Petitioner are entirely erroneous for the following reasons.

First, the exchange authorized by Act 405 of 1962 does not violate any trust for public school purposes or any rights of Petitioner.

Act 405 of 1962 merely authorized an exchange by which there was transferred to the City of New Orleans a fractional 16th Section located in the middle of City Park in New Orleans, and which, because of its long, narrow, irregular shape and existing use as part of the City Park facilities and golf course, had no practical use for school purposes; and in consideration the Orleans Parish School Board acquired from the City a tract of land, consisting of seventeen acres, fronting on Wisner Boulevard near Robert E. Lee Boulevard, which was highly suitable for school purposes and is being used for those purposes.

Section 4 of Act 405 specifically dedicates to public school purposes the Wisner Boulevard land received in exchange for the fractional 16th Section. Section 5 of Act 405 specifies that the "rights of the Jefferson Parish School Board in said land shall be the same as they were in the Sixteenth Section conveyed in Section 1 of this Act."

Assuming, for the sake of argument, the validity of Petitioner's contentions that the State holds 16th Section lands in trust for school purposes and cannot dispose of them otherwise, Act 405 did not violate that trust. The disposition, or transfer, of the fractional 16th Section land authorized by Act 405 was for public school purposes in that the land received in exchange and as consideration for that transfer was expressly dedicated for public school pur-

poses in Act 405 and in the notarial instruments by which the exchange was accomplished, and the new land received by the school board in that exchange is so being used for public school purposes.

Further, under Act 405, all rights of Petitioner are fully preserved and protected. Petitioner was expressly placed by Act 405 in the same position with respect to the new property on Wisner Boulevard as it had been in with respect to the fractional 16th Section. Petitioner lost nothing, not one right or advantage, by the exchange made pursuant to Act 405.

What are these rights of Petitioner? Petitioner's rights *are residual only* and are limited to sharing in the proceeds of any sale of the 16th Section lands. La. Const. of 1921, Art. XII, Sec. 18 (now L.S.A. - R.S. 41:64). Petitioner had no rights of administration or use of the fractional 16th Section transferred or of the new property acquired for school purposes in the exchange under Act 405. That administration and use belong exclusively to the Orleans Parish School Board. L.S.A. - R.S. 41:638.

The 16th Section in question lies wholly within Orleans Parish. Therefore, even though the Township is partially within Jefferson Parish, the Orleans Parish School Board - *and only the Orleans Parish School Board* - could have used the 16th Section for public school purposes; and the Jefferson Parish School Board could not have prevented it from so doing. Under the provisions of LSA - R.S. 41:631 the Orleans Parish School Board could have tendered to the Registrar of the State Land Office a sum equal to only $1.25 per acre and have received a patent from the State covering the 16th Section. Orleans Parish School Board



could then have erected a school house on the site, and used it for public school purposes. The Jefferson Parish School Board could not have prevented this, since their rights are purely residual ones limited to sharing in the proceeds of any sale of the property. Article XII, Sec. 18, La. Constitution of 1921.

If the fractional 16th Section had been sold, Petitioner would be entitled to share in the proceeds. But no sale has taken place and there are no proceeds to divide. Act 405 authorized an exchange, not a sale. A new property dedicated to school purposes was substituted for the fractional 16th Section and Petitioner's rights in the 16th Section were expressly transferred to the new property.

Should the Wisner Boulevard property be sold at some future time, Petitioner will share in the proceeds of that sale, but that is a future matter. Any claim by Petitioner now, as in this suit, is obviously premature.

*C. Distinguishing Cases Cited By Petitioner.*

The various cases from other jurisdictions cited in Petitioner's brief are distinguishable on their facts from the present litigation; and further, do not support appellant's attack on Act 405.

*Lassen v. Arizona*, 87 S.Ct. 584, 385 U.S. 458 (1967) involved acquisition of a right of way by a state highway department through 16th Section lands. No question was raised as to the validity of the taking of the right of way. This Court held, *inter alia*, that actual compensation had to be paid to the State for that right of way in keeping with

the school purposes for which the State held those lands. In *Lassen*, the public school purposes were preserved by requiring compensation to be paid and those funds dedicated to the use of the schools. In the present case, the same public school purposes are accomplished by virtue of dedication to public school purposes of the new lands acquired in the exchange under Act 405.

In *Lassen*, the Supreme Court of the United States found that the action of the State of Arizona violated the provisions of the New Mexico-Arizona Enabling Act. This act was enacted by the United States Congress in 1910, nearly 100 years after Louisiana had already achieved statehood; and 37 years after the State of Louisiana had acquired title to the 16th Section which is the subject of this litigation, and therefore has no application whatsoever to the case at bar.

It should be noted that a portion of the pertinent Enabling Act in *Lassen v. Arizona, supra*, was printed as an appendix at the end of the opinion. Included in that annexed portion of the Enabling Act (87 S.Ct. 584, at pages 591 and 592), is a specific authorization for the State of Arizona to exchange lands owned by it for other lands, public or private, under such regulations as the Arizona Legislature may prescribe. This is certainly a recognition that an exchange fully accomplishes and serves the purposes of any trust for school purposes under which 16th Section lands are held.

Furthermore, in the cited case, the Court found that the State of Arizona's action was violative of its own statutes relative to the disposition of the 16th Section lands, whereas in the case at bar, the action complained of *was taken*



*pursuant to a specific statute enacted by the Legislature of Louisiana.* Even in the cited case, the Court held that the State of Arizona could, in connection with the sale of 16th Section lands, employ the procedures established by the Arizona State Land Commissioner or "... any other procedures reasonably calculated to assure the integrity of the trust and to prevent misapplication of its lands and funds." 87 S.Ct. 584, 588. It is submitted that in the case at bar the State of Louisiana did exactly that which the Supreme Court of the United States said the State of Arizona could have done, but did not do.

Petitioner relies heavily upon *Alamo Land and Cattle Co., Inc. v. Arizona*, 424 U.S. 295, 96 S.Ct. 910 (1976) (P. 6, et seq.). However, this case is completely inapposite to the issues presented in the case at bar. In *Alamo*, Your Honors simply held that a lessee of school lands had a compensable interest therein when the lands were condemned by the United States. The right of the State of Arizona to lease school lands was upheld, even though the New Mexico-Arizona Enabling Act, June 20, 1910, 36 Stat. 557, as amended, is much more restrictive than the Acts of Congress pursuant to which Louisiana acquired the subject property.

The other three cases relied upon by Petitioner all involved the same basic situation as in the *Lassen* case, and involve states other than Louisiana. *United States v. 78.61 Acres of Land in Dawes and Sioux Cos., Neb.*, 265 F. Supp. 564(1967) involved the condemnation and taking of a right-of-way through school lands by the United States Government for a transmission system. *State v. Walker*, 61 N.M. 374, 301 P.2d 317(1956), concerned the acquisition of a

right-of-way through school lands for highway purposes. In *State v. Central Neb. Public Power & Irr. Dist.*, 8 N.W. 2d 841(1943), the State authorized the granting of an easement over public school lands for irrigation purposes. In each of these cases, the holding of the respective courts was that compensation would have to be paid to the State, as trustee of the school lands, for the right-of-way or easement being taken. In none of those cases was an exchange of one school land for another school land involved. The trust for school purposes in those states was protected by requiring that the monetary compensation be paid and used for school purposes. In the present case, however, the school purposes were accomplished by dedicating to school purposes the new lands acquired in the exchange.

Petitioner's contentions fail for still another reason, however. The absolute right of the State of Louisiana to dispose of its 16th Section lands, in the manner provided by her Legislature, has been established by a long line of cases which have gone unchallenged for nearly fifty years. That right of the State is not subject to attack by Petitioner, particularly in a case such as this where there has been no sale, but rather an exchange by the terms of which other lands dedicated for school purposes are received as the consideration for the transfer of the 16th Section lands.

## CONCLUSION

Petitioner has wholly failed to sustain its burden of establishing under Rule 19 that there are special and important reasons why the writ should be granted. The decision below has not decided a federal question of substance not theretofore determined by this Court, nor in a way probably not in accord with applicable decisions of this Court.



All of which is respectfully submitted.

SAMUEL I. ROSENBERG of
POLACK, ROSENBERG,
RITTENBERG & ENDOM
1006 Hibernia Bank Building
New Orleans, Louisiana 70112
Telephone: 581-1422
Attorneys for Orleans
Parish School Board

LOUIS B. PORTERIE and

JOHN L. HANTEL of
DUKE & PORTERIE
1206 American Bank Building
New Orleans, Louisiana 70130
Telphone: 581-1206
Attorneys for City Park
Improvement Association

WILLIAM J. GUSTE, JR.
Attorney General

WARREN E. MOULEDOUX,
First Assistant Attorney General
and

LOUIS M. JONES,
Assistant Attorney General
DEPARTMENT OF JUSTICE
STATE OF LOUISIANA
2-3-4 Loyola Building, 7th Floor
New Orleans, Louisiana 70112
Attorneys for Registrar,
State Land Office and
The State of Louisiana

PHILIP S. BROOKS,
City Attorney and

THOMAS P. ANZELMO, SR.,
Assistant City Attorney
Attorneys for the City of
New Orleans



## CERTIFICATE OF SERVICE

I, Samuel I. Rosenberg, the attorney for Orleans Parish School Board, one of the respondents herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that I have this day served copies of the foregoing Brief of Respondents in Opposition on the Petitioner by mailing same in a duly addressed envelope with postage prepaid to its attorneys of record as follows:

TO: JAMES O. MANNING, ESQ.
Post Office Box 7746
Metairie, Louisiana 70010

TO: JACK GRANT, ESQ.
601 Second Street
Gretna, Louisiana 70053

New Orleans, Louisiana, this 7th day of December, 1977.

SAMUEL I. ROSENBERG